

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

BLACK ANVIL OPERATING LLC,)	
)	
Plaintiff,)	
)	
v.)	No. CV-21-467-R
)	
)	
BENCHMARK ENERGY, LLC;)	
BE ANADARKO, LLC; and)	
SK NEMAHA, LLC)	
)	
Defendant.)	

ORDER

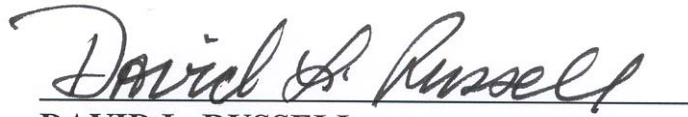
Before the Court is Defendants’ Partial Motion to Dismiss. Doc. No. 10. Plaintiff Black Anvil Operating LLC (“Plaintiff”) filed a response in opposition to Defendants’ Motion. Doc. No. 13. The Court finds as follows.

Defendants seek dismissal of Plaintiff’s claim for an unconstitutional taking of property. Doc. No. 10. Defendants reason that dismissal is appropriate because the Fifth Amendment of the U.S. Constitution prohibits taking of private property for *public use*, which means the Fifth Amendment applies only to the Government’s taking of private property. *Id.* p. 2 (emphasis in original). Further, Defendants argue that Defendants Benchmark, BE Anadarko, and SK Nemaha are “Limited Liability Compan[ies],” not governmental entities, and therefore, the takings clause is inapplicable. *Id.*

However, in its response brief, Plaintiff explains that it “has a cognizable claim” under the *Oklahoma* Constitution. Doc. No. 13, p. 2 (emphasis added). As the Plaintiff

points out, Oklahoma recognizes a claim under its Constitution for a taking of private property conferring a benefit on a private party. Okla. Const. art. II, § 23 (“No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity ...”); *see also Bd. of Cnty. Comm'rs of Muskogee Cnty. v. Lowery*, 136 P.3d 639, 653 (Okla. 2006) (finding that “the takings in the four instant cases are unlawful takings of Landowners' private property to confer a private benefit on a private party ... in violation of Article 2, §§ 23 & 24 of the Oklahoma Constitution”). Accordingly, because Oklahoma recognizes a claim for a taking of private property by a private party, Defendants’ Partial Motion to Dismiss, Doc. No. 10, is hereby DENIED.

IT IS SO ORDERED on this 25th day of June 2021.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE